

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4493 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAN @ PEDHI ROOPCHAND SINDHI

Versus

STATE OF GUJARAT

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Appearance:

THROUGH JAIL Mr.Banna Dutta for Petitioner as Amicus Curie

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/11/1999

ORAL JUDGEMENT

1. The petitioner is a detenue who came to be detained by an order passed on 3rd March 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short], holding that the detenue is a bootlegger and is involved in the activities detrimental to public order. The detaining authority took into

consideration five offences registered against the detinue under the Bombay Prohibition Act. It also considered the statements of two witnesses in respect of two unregistered offences and recorded a satisfaction about the correctness and genuineness of the incidents narrated by the witnesses and the fear expressed by the witnesses from the detinue. The authority therefore exercised privilege u/s 9[2] of the PASA Act. The authority recorded that it is not possible to resort to other less drastic remedies under the other laws for preventing the petitioner immediately from pursuing his illegal and anti social activities and detention under the PASA Act is the only efficacious remedy, which can be resorted to.

2. The detinue made an application to this Court through jail requesting for his release from PASA stating that he has been wrongly detained. The said letter was treated as a writ petition under Article 226 of the Constitution of India. As the detinue was not represented by an advocate, Ms. Banna Datta volunteered to render services in the case as amicus curiae. She was provided with the papers of detention with the help of learned AGP.

3. It has been argued by Ms. Datta on behalf of the detinue that the last offence registered was on 26th February 1999. The detinue was released on 27th February 1999. The statements of the witnesses came to be recorded on 26th February 1999. The same were verified on 3rd March 1999 and the order came to be passed by the detaining authority on that very day. It was, therefore, urged that the time lag between verification and the order was practically nil and there was no scope for the detaining authority to apply mind and consider the need for exercise of powers u/s 9[2] of the PASA Act. She has placed reliance on the decision in the case of Kalidas Kahar v/s state of Gujarat as reported in 1993 [2] GLR 1659 and submitted that the petition deserves to be allowed.

4. The petition is opposed to by the learned AGP Mr. Joshi. He submitted that the detaining authority has taken into consideration all relevant aspects and thereafter, passed the order of detention and therefore, the petition calls for no indulgence. Mr. Joshi has produced on record an affidavit in reply, a copy of compilation which was served on the detinue alongwith the order of detention for perusal of the Court.

5. There is no dispute about the fact that the

proposal came to be made on 27th February 1999, but Mr. Joshi, after perusing the file received by him from the Department, states that the proposal was received on 3rd March 1999.

6. The outcome of the above factual development is that the detaining authority received the proposal on 3rd March 1999, verified the statements of witnesses on 3rd March 1999 and passed the order of detention on 3rd March 1999 itself. This Court is at loss to appreciate as to how, the detaining authority could have satisfied itself, about the correctness and genuineness of the incidents as well as the fear expressed by the witnesses and exercised powers u/s 9[2] of the PASA Act.

7. The decision in case of Kalidas Kahar [supra] would be applicable to the facts of the present case with greater force because, in that case, the proposal was made on 16th October 1999 and the order was passed on 17th October 1999. In the instant case, the proposal is received by the detaining authority on 3rd March 1999 and the order is passed on the same day. This reflects the casual manner in which the order is passed and sheer non-application of mind. In this view of the matter, the petition deserves to be allowed.

8. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 3rd of March 1999 in respect of the petitioner - Mohan alias Pedhi Rupchand Sindhi, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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